

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.:22-60028-CR

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUKE JOSELIN,

Defendant.

/

**DEFENDANT’S MOTION *IN LIMINE* TO REDACT THE INDICTMENT AND
PROHIBIT USE OF THE WORD “KICKBACK” DURING TRIAL**

DEFENDANT, LUKE JOSELIN, through counsel, respectfully moves the Court to order that the word “kickbacks” be redacted from the indictment and the Government be prohibited from using that word at trial, and in support states:

- 1) The word “kickbacks” is used for times in Joselin’s indictment, to reference the monies that were paid by PPP loan applicants to the people that processed their applications and to those who referred them. See Indictment, at [D.E. 1] P. 5, ¶3 and P. 7, ¶3.
- 2) Webster’s defines “kickbacks” as “a return of a part of a sum received often because of confidential agreement or coercion.” Merriam-Webster's Collegiate Dictionary, https://www.merriam-webster.com/dictionary/kickbacks?utm_campaign=sd&utm_medium=serp&utm_source=jsonldonline
- 3) The examples that Webster’s provide for how the word would be used are: “every city contract had been let with ten percent kickback to city officials”; and “[s]everal company executives were accused of accepting kickbacks”. *Id.*
- 4) Google defines the word as “a payment made to someone who has facilitated a transaction or appointment, especially illicitly”, and for its example of how the word

would be used offers “the ruling party depends on contributions and kickbacks”. **Google Dictionary**

<https://www.google.com/search?q=google+dictionary&oq=Google+dictionary&aqs=cchrome.0.0i131i433i512j0i433i512l2j0i131i433i512j0i512l3j69i60.5058j0j7&sourceid=chrome&ie=UTF-8#dobs=kickbacks>

- 5) The definitions from both sources include conduct that is neither illicit nor improper, but both also emphasize impropriety as being germane to the common understanding of the word’s meaning.
- 6) The Government uses the word with reference to the payments described in Joselins’ indictment for the very purpose of connoting impropriety, if not illegality.
- 7) But in the world of professional services and commercial dealings, there is nothing inherently corrupt or illegal about charging processing fees, referral fees, finder's fees, bird dog fees and the like.
- 8) Nor is it inherently illegal to charge fees for professional service on a percentage basis, as plaintiff lawyers do with their contingency fees.
- 9) The Anti-Kickback Act targets public corruption and refers to kickbacks as improper remunerations paid to public officials as bribes. See 41 U.S.C. § 8701.
- 10) And there is an Anti-Kickback Statute which regulates payments made by those who may benefit financially from prescriptions for such services provided through federal health care programs, 42 U.S.C. § 1320(a)(7b).
- 11) Both statutes define the word “kickbacks” for purposes of their respective applications, and neither definition describes the payments referenced in Joselin’s indictment.
- 12) The Government has cited no law that prohibits the payment of processing and/or referral fees in regard to the PPP program and defines such payments as kickbacks.
- 13) The Government has simply designated such payments illegal by implication and labeled them kickbacks as a conveniently prejudicial term of art.
- 14) The crux of the Government’s fraud claims is that false information was submitted for loan approvals.

15) Referring to the payments as kickbacks is therefore unnecessary for the Government to present and prove its case and permitting such superfluous and prejudicial references will violate Joselin's right to a fair trial.

WHEREFORE, Joselin respectfully moves the Court to order that all references to "kickbacks" be redacted from the indictment, and further, that the Government is prohibited from using that word at trial.

CERTIFICATE OF GOOD FAITH CONFERENCE

I hereby certify that the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in good faith to resolve the issues raised in the motion and states that the following issues have been resolved: **The Assistant United States' Attorney Kiran Bhat objects to said Motion.**

Date: August 10, 2022.

Respectfully Submitted,

THE DAVIS LEGAL CENTER
/s/ Dameka L. Davis, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August 2022, I served a copy of the foregoing via electronic mail on all counsel of record as set forth in the service list.

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